

1 EVAN R. CHESLER (*pro hac vice* pending)
2 PETER T. BARBUR (*pro hac vice* pending)
3 ELIZABETH L. GRAYER (*pro hac vice* pending)
4 CRAVATH, SWAINE & MOORE LLP
5 825 Eighth Avenue
6 New York, NY 10019
7 Telephone: (212) 474-1000
8 Facsimile: (212) 474-3700

9 STEVEN M. STRAUSS (99153) (sms@cooley.com)
10 MARTIN S. SCHENKER (109828)
11 (mschenker@cooley.com)
12 JOHN S. KYLE (199196) (jkyle@cooley.com)
13 COOLEY GODWARD KRONISH LLP
14 4401 Eastgate Mall
15 San Diego, CA 92121
16 Telephone: (858) 550-6000
17 Facsimile: (858) 550-6402

18 Attorneys for Defendant
19 QUALCOMM INCORPORATED

20 UNITED STATES DISTRICT COURT
21 SOUTHERN DISTRICT OF CALIFORNIA

22 BROADCOM CORPORATION,
23
24 Plaintiff,
25
26 v.
27 QUALCOMM INCORPORATED,
28 Defendant.

Case No. 08cv1607-JAH (JMA)

**QUALCOMM INCORPORATED'S NOTICE
OF RELATED CASE**

Judge: Hon. John A. Houston

08cv1607-JAH (JMA)

1 Defendant QUALCOMM Incorporated (“Qualcomm”) respectfully submits this notice of
 2 related case pursuant to Local Rule 40.1(e), to alert the Court of two related cases currently
 3 pending in this District before the Honorable William Q. Hayes:

- 4 • *Meyer v. Qualcomm, Inc.*, No. 08-CV-0655-WQH (LSP) (S.D. Cal.); and
- 5 • *Valikhani v. Qualcomm, Inc.*, No. 08-CV-0786-WQH (JMA) (S.D. Cal.)

6 The present action is related to these two actions and therefore should be assigned to
 7 Judge Hayes under Local Rule 40.1. Under that rule, “[a]n action or proceeding is related to
 8 another action or proceeding where both of them: (1) Involve some of the same parties and are
 9 based on the same or similar claims, or (2) Involve the same property, transaction, or event, or (3)
 10 Involve substantially the same facts and the same questions of law”. Local Rule 40.1(f). Related
 11 actions, “[i]n order to avoid unnecessary duplication of judicial effort”, are assigned under Local
 12 Rule 40.1(h), “to the district and magistrate judge to whom the lowest numbered case was
 13 assigned”.

14 The present action—like the lower-numbered *Meyer* and *Valikhani* actions—is an
 15 antitrust case against Qualcomm under the Sherman Act and California’s Unfair Competition
 16 Law. The plaintiffs in all three cases assert essentially the same theory of liability—namely, that
 17 Qualcomm has monopolized certain markets and charged supracompetitive royalties for wireless
 18 technology by deceiving a private standards-determining organization known as “ETSI” into
 19 choosing to incorporate Qualcomm’s patented technology within a third-generation cellular
 20 standard called “UMTS”. Indeed, because of these similarities, Qualcomm originally had moved
 21 to transfer the *Meyer* and *Valikhani* actions to the District of New Jersey, where this action had
 22 been pending. And, in connection with Plaintiff Broadcom Corporation’s (“Broadcom”) motion
 23 to transfer the present action to this Court, both Broadcom and the New Jersey District Court
 24 emphasized the similarity between this action and the *Meyer* and *Valikhani* actions. (See Dkt.
 25 175 [Broadcom’s Mot. Transfer], at 1 (“[*Meyer* and *Valikhani* present questions of law and fact
 26 nearly identical to Broadcom’s Second Amended Complaint in this proceeding.”); Dkt. 187
 27 [Order Transferring Action], at 9-10 (“[T]here are two similar federal cases, which would require
 28 depositions of the same witnesses, pending in the Southern District of California.”.) Qualcomm

1 additionally has submitted notices of related case in the *Meyer* and *Valikhani* actions.¹ Given
2 their factual and legal similarities, these actions should be treated as “related” under Local Rule
3 40.1(f).

4 Thus, because Judge Hayes currently is presiding over two related, lower-numbered
5 actions, Qualcomm respectfully requests that the present action be assigned to Judge Hayes under
6 Local Rule 40.1.

7 Dated: September 4, 2008

COOLEY GODWARD KRONISH LLP
Steven M. Strauss (99153)
Martin S. Schenker (109828)
John S. Kyle (199196)

10 By /s/ Samantha Everett (234402)

11 severett@cooley.com

12 CRAVATH, SWAINE & MOORE LLP
13 Evan R. Chesler
14 Peter T. Barbur
Elizabeth L. Grayer

15 Attorneys for Defendant
16 QUALCOMM INCORPORATED

17 602329 v1/SD

18
19
20
21
22
23
24
25
26 ¹ The Plaintiff in the *Meyer* action also had submitted his own notice of related case, purporting to notify the Court of
27 two other cases that he believed were “related” within the meaning of Local Rule 40.1: *Qualcomm Inc. v. Broadcom*
28 *Corp.*, No. 05cv1392 (S.D. Cal.) (“1392”) and *Qualcomm Inc. v. Broadcom Corp.*, 05cv1958 (“1958”). However,
neither of those actions satisfied the standard for relatedness under Local Rule 40.1(e) and, in any event, were no
longer proceeding on the merits. The Honorable Rudi M. Brewster, who presided over those actions, properly
declined an order of transfer pursuant to the “low number” rule.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 4, 2008, I electronically filed the foregoing **QUALCOMM**
 3 **INCORPORATED'S NOTICE OF RELATED CASE** with the Clerk of Court using the
 CM/ECF system, which will send notification of such filing to the following attorneys of record
 at the following listed email addresses.

- 4
- 5 • **Steven J Kaiser**
skaiser@cgsh.com
- 6

7 I also hereby certify that I am personally and readily familiar with the business practice of Cooley
 8 Godward Kronish LLP for collection and processing of correspondence for mailing with the
 United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to
 be placed in the United States Postal Service at San Diego, California on this 4th day of
 9 September, 2008 to the following listed addresses.

10 Robert N. Feltoon
 11 Conrad O'Brien Gellman & Rohn, PC
 1000 Haddonfield-Berlin Road
 12 Suite 202
 Voorhees, NJ 08043

Richard Hernandez
 McCarter & English, LLP
 Four Gateway Center
 100 Mulberry Street
 Po Box 652
 Newark, NJ 07101-0652

14 Robert A. Magnanini
 15 Boies, Schiller & Flexner, LLP
 150 John F. Kennedy Parkway
 16 4th Floor
 Short Hills, NJ 07078

William J. O'Shaughnessy
 McCarter & English, LLP
 Four Gateway Center
 100 Mulberry Street
 PO Box 652
 Newark, NJ 07101-0652

18 David S. Stone
 19 Boies, Schiller & Flexner LLP
 150 John F. Kennedy Parkway
 20 4th Floor
 Short Hills, NJ 07078

Mark D. Selwyn, Esq.
 Kate Saxton, Esq.
 Wilmer Cutler Picketring Hale & Dorr LLP
 60 State Street
 Boston, MA 02109

22 Steven John Kaiser, Esq.
 Cleary Gottlieb Steen & Hamilton LLP
 2000 Pennsylvania Avenue, N.W.
 23 Washington, DC 20006

David S. Stone, Esq.
 Boies, Schiller & Flexner LLP
 150 John F. Kennedy Parkway
 Short Hills, NJ 07078

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

602352 v1/SD


Sylvana Issa
COOLEY GODWARD KRONISH LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
Telephone: (858) 550-6000
FAX: (858) 550-6420
Email: sissa@cooley.com